

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

SAMUEL FIGUEROA,

ECF Case

Plaintiff,
v.

07 CV 11333 (LAP) (FM)

**DECLARATION IN
OPPOSITION TO
MOTION TO DISMISS**

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF CORRECTION OFFICER F/N/U
SANCHEZ and NEW YORK CITY DEPARTMENT
OF CORRECTION OFFICER JANE DOE 1 and
NYC DEPARTMENT OF CORRECTION OFFICERS
JOHN DOES (1-5) and JANE DOES (2-5),
CAPTAIN JANE DOE (1-5), and CAPTAIN
JOHN DOE (1-5), each individually and
in their official capacities as
Correction Officers, and PRISONER
HEALTH CARE SERVICES,

Defendants.

-----x

JOANNE M. DWYER, an attorney duly admitted to practice before the courts of the State of New York and the United States District Court for the Southern District of New York, hereby affirms under the penalties of perjury and pursuant to 28 U.S.C. § 1746 as follows:

1. I am the attorney for the plaintiff Samuel Figueroa in the above-captioned matter. I am familiar with the facts and circumstances of this case, and make this declaration in opposition to defendant City's motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

2. Annexed hereto as Exhibit 1 is a copy of the Civil Cover Sheet filed with the Court and time and date stamped at 12:00 a.m. on December 14, 2007.

3. Annexed hereto as Exhibit 2 is a copy of the letter from Joanne M. Dwyer, plaintiff's counsel to the Hon. Loretta A. Preska, United States District Court Judge, SDNY, dated April 8, 2008, citing various cases that support the plaintiff's opposition to defendant's motion to dismiss plaintiff's civil rights complaint.

4. Plaintiff respectfully submits that defendant City is not entitled to dismissal of the plaintiff's claims for failure to state a cause of action pursuant to Fed. R. Civ. Proc. Rule 12(b)(6).

5. Plaintiff's claim was timely filed within the controlling three year statute of limitations for civil rights claims that commenced on December 13, 2004 and expired as of 12:00 a.m. (midnight) on December 13, 2007, alternately expressed as 12:00 a.m. December 14, 2007, but understood to mean the precise moment that is both the end of one day and simultaneously the beginning of another.

Dated: New York, New York
May 27, 2008

/s/Joanne M. Dwyer

Joanne M. Dwyer [JD9852]

April 8, 2008

By Fax: (212) 805-7941

The Hon. Loretta A. Preska
United States District Judge, SDNY
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007-1312

Re: Samuel Figueroa v. City of New York, et al. 07 CV 11333 (LAP)

Your Honor:

I am writing on behalf of the plaintiff in the above-referenced case in response to the letter by counsel for defendant City of New York, Mark Zuckerman, dated April 7, 2008. By Order dated April 7, 2008, the Court directed Mr. Zuckerman to inform the Court of defendants' position on plaintiff's argument that the action is timely because of the midnight date stamp.

Mr. Zuckerman responded with a request that his time to respond to plaintiff's complaint be enlarged from April 10, 2008 to a date convenient to the Court. I have no objection to an enlargement of the defendant's time to respond, however, plaintiff respectfully requests that plaintiff's time to serve the individual Jane and John Doe defendants be likewise enlarged beyond the 120 day time period for service as authorized with permission of the Court by Federal Rule of Civil Procedure 4(m), as defendants have not yet identified the individual defendants and plaintiff is entitled to discover their identities so that the proper parties may be served in a timely manner.

Thank you for consideration of plaintiff's request.

Very truly yours,

Joanne M. Dwyer (JD-9852)
Attorney for Plaintiff Samuel Figueroa

Cc: Mark Zuckerman, Senior Counsel
Fax: 212-788-9776